



POLICE DEPARTMENT

March 2, 2021

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Jose Rendon :

Tax Registry No. 947942 :

114 Precinct :

Case No.

2019-20147

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU:

Jeannie Elie-Fulgencio, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent:

John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Police Officer Jose Rendon, on or about April 19, 2018, at approximately 1341 hours, while assigned to 114 PCT and on duty, in the vicinity of Broadway and Steinway Street, Queens County, abused his authority as a member of the New York City Police Department, in that he stopped the vehicle in which Edward Jimenez was driving without sufficient legal authority.

P.G. 212-11, Page 4, Paragraph 16 INVESTIGATIVE ENCOUNTERS

2. Police Officer Jose Rendon, on or about April 19, 2018, at approximately 1341 hours, while assigned to 114 PCT and on duty, in the vicinity of Broadway and Steinway Street, Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the New York City Police Department, in that he wrote a reckless driving summons and a loud exhaust summons to Edward Jimenez without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT – PROHIBITED CONDUCT

3. Police Officer Jose Rendon, on or about April 19, 2018, at approximately 1341 hours, while assigned to 114 PCT and on duty, in the vicinity of Broadway and Steinway Street, Queens County, was discourteous, in that he ordered Edward Jimenez to lower all four car windows in the rain for a prolonged period of time without sufficient legal authority.

P.G. 203-09, Page 1, Paragraph 2 PUBLIC CONTACT – GENERAL

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me, by video, on January 20, 2021. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB called Edward Jimenez as its witness, and introduced video footage taken from the dash cam of Mr. Jimenez's vehicle. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find as follows:

Specification 1 (wrongful stop): Not Guilty

Specification 2 (wrongful summonses): Not Guilty

Specification 3 (discourtesy): Guilty

Recommended penalty: Ten (10) vacation days.

ANALYSIS

This case involves a car stop just past the intersection of Steinway Street and Broadway in Queens, New York on the afternoon of April 19, 2018. Edward Jimenez testified that he was driving his Mercedes Benz northbound on Steinway Street, a "big congested street," when he was pulled over by Respondent, soon after crossing the "busy intersection." Jimenez, who was on his way to meet his girlfriend, insisted he was not speeding prior to being pulled over. He also testified that his car drove quietly, and that there was not loud noise emanating from his exhaust. (Tr. 22, 25-27, 65, 94-96)

After the Mercedes stopped, Respondent approached Jimenez and immediately told him that he was being pulled over for reckless driving, and because his exhaust system was too loud. Respondent asked the motorist for his license and registration. Jimenez testified that he complied with the request, and also handed Respondent two PBA cards he had received from police officer friends. Respondent walked back to his police vehicle for several minutes, then returned to the Mercedes, handed Jimenez his license and registration, and wished the motorist a good day, without issuing him a summons. (Tr. 28-29, 84)

Respondent did not, however, return the PBA cards, saying that he would mail them back to the officers who had issued them. Jimenez testified that he asked to take a picture of Respondent's name and badge number, but Respondent ignored the request and walked back toward his car. Jimenez exited his vehicle and walked toward Respondent, and again asked to take a photograph. Respondent ordered Jimenez to get back inside his car, which he did, and then had Jimenez hand him his license and registration for a second time. Before walking back to his police car, Respondent instructed Jimenez to keep all of the car windows down, even though the rain was getting heavier. After Jimenez lowered all four windows, Respondent took

the motorist's car keys and placed them on top of the car. Respondent returned to his police car for about 20 minutes, then returned to the Mercedes and handed Jimenez two summonses, for reckless driving (CCRB Ex. 5) and for a loud exhaust (CCRB Ex. 4). Respondent eventually did allow Jimenez to take a photograph of his name and shield (CCRB Ex.2A). (Tr. 29-33, 68, 83)

Jimenez, who has not filed a lawsuit against the city in relation to this incident, testified that his driver-side window switch was damaged as a result of the rain that came into the car after Respondent instructed him to keep his windows open. Three photographs taken by Jimenez as he sat in the car waiting for the summonses show how the interior of the vehicle was getting wet from the rain, leading to the damage (CCRB Ex. 2B-2D). The day after the incident, Jimenez went to have his exhaust tested, and received documentation that the sound from the exhaust was within the lawful decibel level. Jimenez brought the diagnostic testing results to a hearing on the summons and mentioned the report to the hearing judge, who dismissed the summons (CCRB Ex. 3); Respondent was not present for that hearing. Jimenez did not, however, produce a copy of that documentation at this trial. Jimenez also was successful in having the reckless driving summons dismissed in criminal court; he informed the judge that he had dash cam footage, and the judge dismissed the summons without viewing the video or asking any questions about the driving conditions at the time; Respondent was not present for that hearing either. (Tr. 39-44, 65-66, 69-72, 79, 99-106)

A video recording taken from a dash cam inside Jimenez's vehicle was admitted into evidence (CCRB Ex. 1). Jimenez retrieved the footage from the dash cam later that same day, by copying it onto his phone. The time stamp on the footage does not match the actual date and time of the incident; Jimenez explained that he did not set the date and time manually in advance. The footage runs for just over five minutes, and shows Jimenez driving north on Steinway Street, until he eventually pulls over just past the intersection of Steinway and Broadway. It appears to

be raining lightly, and traffic is busy with other cars and pedestrians. Music from the Mercedes' radio can be heard at times, but not much audible sound can be heard from outside the vehicle, including from the exhaust. When the car is pulled over, the footage does not capture the sound of Respondent's siren. (Tr. 25, 47, 50, 56, 60-61, 87-88, 94-98)

Respondent testified that while his marked RMP was stopped facing eastbound on Broadway, about two or three car lengths shy of the "major intersection" of Steinway and Broadway, his attention was drawn to the Mercedes due to the loud sound coming from its exhaust. Respondent then observed Jimenez "zoom" through the intersection, and continue north on Steinway. It was raining, the pavement was wet, and it was "a very, very congested area." The Mercedes was about 150 feet away when it passed Respondent's field of vision. In response, Respondent made a left turn onto Steinway, activated his lights and siren, and pulled over Jimenez. (Tr. 114-21, 140, 144, 147, 159)

Respondent issued two summonses to Jimenez, for reckless driving and a loud exhaust. The reckless driving summons (CCRB Ex. 5) alleged that Jimenez was operating his vehicle "in a manner that is unreasonably dangerous to other motorist[s] and pedestrians using the public road." The summons for the loud exhaust (CCRB Ex. 4) alleged that Jimenez was driving "with a muffler/exhaust generating unreasonable noise that [was] plainly audible at a distance of over 150 ft." Respondent testified that he believed Jimenez was driving recklessly based on the overall circumstances: his excessive speed, the rainy weather conditions, the wet pavement, and the heavily trafficked area at that hour. Respondent noted, "There's too many people, it's too congested, there's too many pedestrians at the location to be traveling at a high rate of speed, and in the rain a motorist would be able to lose quickly traction while driving there, or slide, or hydroplane on the road." The front of Respondent's summons did not reflect details of the alleged reckless driving, but Respondent testified that he did note on the back of the summons,

“pavement wet, reckless driving in the rain.” Respondent was not notified to appear and testify for either summons. (Tr. 123, 126-27, 132, 140-41, 151-52, 156-57, 160-61)

Respondent, who has issued hundreds of traffic summonses, and been involved in thousands of car stops, testified that he could not remember all of the details of his encounter with Jimenez. He claimed, for instance, that he could not recall any details of his subsequent interaction with Jimenez after the car stop, including anything involving the PBA cards, or whether he instructed Jimenez to lower all the windows. (Tr. 122-26, 164-67)

A preliminary question is whether the video footage in evidence accurately portrays what occurred. During his testimony, Respondent questioned whether the video, which does not have an accurate time stamp, and appears to skip forward unaccountably for about 32 seconds early in the footage, actually reflects the time and date of the incident. He noted that the footage does not capture the RMP's lights or siren as he pulled over Jimenez. (Tr. 130-36) After carefully viewing the video, in conjunction with the testimony of both witnesses, I reject Respondent's suggestion. First, Respondent acknowledged that the location where the Mercedes pulls over on the video does match where he actually pulled the car over. (Tr. 170-71) Additionally, the video footage, which Jimenez testified he copied from the dash cam later that same day, shows the rainy conditions and the heavy vehicular and pedestrian traffic as the motorist drove northbound on Steinway, in a manner that is consistent with the testimony. As such, I find that that the video is an accurate depiction of how Jimenez was driving the vehicle at the time in question. With that in mind, we turn to the three specifications.

Specification 1 charges Respondent with stopping Jimenez's vehicle without sufficient legal authority, while Specification 2 charges him with issuing two summonses to Jimenez, one for driving recklessly, and the second for a loud exhaust, without sufficient legal authority. Section 1212 of the New York Vehicular Traffic Law prohibits reckless driving, which is

defined as driving "in a manner which unreasonably interferes with the free and proper use of the public highway, or unreasonably endangers users of the public highway." Section 24-236(a) of the Administrative Code prohibits operating a vehicle where "the muffler or exhaust generates a sound that is plainly audible to another individual at a distance of 150 feet or more from the motor vehicle."

Respondent testified that his attention was drawn to the Mercedes by the excessive noise coming from the exhaust, which he was able to hear from a distance of approximately 150 feet. He also observed the vehicle accelerate through the intersection at an excessive rate of speed. Respondent explained that he determined Jimenez was driving recklessly based on the totality of the circumstances, including how he observed the Mercedes speed through the intersection, on a rainy day, with wet pavement, in a heavily trafficked congested area, with many vehicles and pedestrians in the vicinity in the middle of the afternoon. Jimenez, in contrast, denied that his exhaust was excessively loud, and insisted that he remained safely within the speed limit at all times.

The video footage supports Respondent's testimony as to the reckless manner in which Jimenez was driving. Specifically, at the 11:19 mark, Jimenez's vehicle appears to accelerate at a high rate of speed through the intersection, and continues in that manner for about eight seconds, before being forced to slow down dramatically because of traffic in front of him. The footage also corroborates Respondent's account as to the rainy conditions and the heavily trafficked area; Jimenez, himself, confirmed that it was raining, that the area was congested, and it was a busy intersection.

Further, it is logical and plausible that the sound of the loud exhaust is what first drew Respondent's attention to the vehicle, which he then observed speeding through the intersection. Indeed, no credible evidence was presented to the contrary – there was nothing to suggest that

Respondent turned the corner and just randomly stopped Jimenez's vehicle for no reason, and only fabricated the basis for the stop some time later. Rather, the credible evidence supports the conclusion that the loud exhaust and reckless driving were what led to the stop; indeed, Jimenez himself acknowledged that upon approaching the Mercedes, Respondent immediately informed him that he was being stopped for reckless driving and a loud exhaust.

As such, Respondent had sufficient legal authority to stop the vehicle, and to issue two summonses to Jimenez, for reckless driving and a loud exhaust, based on the officer's observations of Jimenez's car as it passed through the intersection of Steinway and Broadway. Even though each summons was subsequently dismissed, those dismissals occurred without Respondent offering testimony in either matter. Similarly, Jimenez's testimony that a mechanic certified that the decibel level of his exhaust was within the legal level does not negate Respondent's observations that on the date of the incident, from his experience the exhaust was unreasonably loud. Further, even though Respondent delayed issuing the summonses to Jimenez, as discussed more fully in Specification 3, below, that delay does not negate the fact that Respondent had a legal basis for doing so. Taken as a whole, the record has failed to establish, by a preponderance of the credible evidence, that Respondent stopped the vehicle without sufficient legal authority, or that he issued the two summonses without sufficient legal authority. Accordingly, I find him not guilty of Specifications 1 and 2.

Specification 3 charges Respondent with acting in a discourteous manner toward Jimenez, in that he wrongfully ordered the motorist to lower all of his car windows for a prolonged period of time while it was raining. Section 203-09 of the Patrol Guide requires MOS to be "courteous and respectful" in their dealings with the public. Here, even though the stop itself was justified, as was the issuance of the summonses, the way in which Respondent interacted with Jimenez during the car stop was discourteous.

Respondent testified that he has issued hundreds of traffic summonses, and has been involved in thousands of car stops, and that he is unable to recall much of what transpired during this particular incident, even though it involved a rather unique interaction with Jimenez involving the PBA cards. As such, his testimony provided minimal insight into what occurred during the stop. Jimenez, meanwhile, was detailed and logical as to his interactions with Respondent. After Respondent chose not to return the PBA cards, Jimenez asked to take a photograph of Respondent's name and shield number, which Respondent ignored. Instead, Respondent ordered Jimenez to sit in his car with the windows open, even though it was raining outside, while Respondent reversed course and wrote out the two summonses. Jimenez's credible account of how he was forced to sit with the windows open was supported by the photographs in evidence, which show how wet it was inside the vehicle.

Based on the totality of the credible evidence, I find that after Jimenez produced the PBA cards, Respondent, using his discretion, initially declined to issue him any summonses. However, when Jimenez asked that the cards be returned, and then requested to take a photograph memorializing Respondent's name and shield number, Respondent moved the interaction into a new direction. Not only did Respondent change his mind and decide to issue the two summonses to Jimenez, he also instructed him to sit in the car with the windows down even though it was raining. As a result, Jimenez sustained damage to his car's window switch. As counsel for Respondent conceded, there were no safety concerns articulated that would justify Respondent's conduct; rather, his actions came across as spiteful and vindictive. The fact that Respondent eventually did allow Jimenez to take a photograph does not negate Respondent's unjustified treatment of the motorist when he first requested the opportunity to do so.

Under these circumstances, Respondent's conduct constituted discourteous behavior. He essentially penalized Jimenez for wanting to memorialize Respondent's name and shield number,

which the motorist was well within his rights to do. Accordingly, I find Respondent guilty of Specification 3.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 14, 2009. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Here, Respondent has been found guilty of one of the three specifications, for acting discourteously toward Jimenez. The CCRB recommends that Respondent forfeit twenty-five (25) vacation days, and be placed on one-year dismissal probation. In light of the not guilty finding on two of the charges, a lesser penalty is warranted.

The presumptive penalty for a finding of discourtesy is five (5) vacation days. However, the gratuitous nature of Respondent's conduct during his interaction with Jimenez, and the damage caused to the motorist's vehicle as a result of Respondent's actions, are aggravating factors warranting a higher penalty. Respondent's reaction to Jimenez's request to photograph his name and shield was particularly troubling. After having already returned Jimenez's license and registration and telling him he was free to leave, Respondent abruptly reversed course and had Jimenez hand over the license and registration a second time, and instructed the motorist to lower his windows and sit there for 20 minutes in the rain. As a result of these actions, the interior window switch of Jimenez's car was damaged.

Additionally, this was not Respondent's first adverse disciplinary finding. In 2018, Respondent forfeited ten (10) vacation days following a Department trial where he was found guilty of using excessive force, and causing damage to property, during an encounter with a

motorist who had just been involved in a three-car collision. Although that case did not involve the same offense as here, and the presumptive penalty in the present matter is lower than the force charge in the older one, it still is a concern that this is Respondent's second case of misconduct involving a motorist.

It is important that members of service uphold the values of the Department, including respecting the dignity of each individual. In this case, Respondent acted contrary to that requirement. Taking into account the totality of the facts and circumstances in this matter, including the aggravating factors discussed above, I recommend that Respondent forfeit ten (10) vacation days.

Respectfully submitted,

Jeff Adler

Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED

[Signature]
JUN 18 2021
DERMOT SHEA
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOSE RENDON
TAX REGISTRY NO. 947942
DISCIPLINARY CASE NO. 2019-20147

Respondent was appointed to the Department on January 14, 2009. On his last three annual performance evaluations, he twice received 3.5 overall ratings of "Highly Competent/Competent" in 2015 and 2016 and received a 3.0 rating of "Competent" in 2014. He has been awarded one medal for Excellent Police Duty. In his 12 years of service, [REDACTED].

In 2019, Respondent forfeited 10 vacation days for, without sufficient authority, (i) forcibly pulling an individual out of a vehicle and (ii) damaging said individual's property. He was placed on Level 1 Force Monitoring on August 17, 2016, for having received three or more CCRB complaints in one year. Monitoring remains ongoing.

For your consideration.

Jeff Adler

Jeff S. Adler

Assistant Deputy Commissioner Trials